Supreme Court, U.S.
FILED
DEC 20 1995
CLERK

No. 95-210

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

HOLLY FARMS CORPORATION;
TYSON FOODS, INCORPORATED,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

CHAUFFEURS, TEAMSTERS AND HELPERS,
LOCAL 391, 29, 71, 355, 592, 657, 988,
AND ALL AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Intervenor,

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF AMICUS CURIAE THE NATIONAL BROILER COUNCIL IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the chicken catchers, forklift operators, and live-haul drivers who catch, cage, and load live chickens on a farm for transportation to a producer's storage facility are engaged in work "by a farmer or on a farm as an incident to or in conjunction with * * * farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market," 29 U.S.C. § 203(f), and are therefore agricultural laborers exempt from the National Labor Relations Act.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
STATEMENT OF INTEREST OF AMICUS CURIAE	1
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	6
ARGUMENT	7
I. PETITIONERS' LIVE-HAUL EMPLOYEES ARE AGRICULTURAL LABORERS UNDER THE PLAIN LANGUAGE OF THE STATUTE	7
II. THE LEGISLATIVE HISTORY AND POLICY OF THE STATUTE CONFIRM THAT PETITIONERS' EMPLOYEES ARE AGRICULTURAL LABORERS	13
III. NO DEFERENCE IS OWED TO THE BOARD'S ERRONEOUS INTERPRETATION OF THE FLSA	19
CONCLUSION	22

TABLE OF AUTHORITIES

Cases — Page

American Federation of Government Employees, AFL-CIO, Local 3854 v. *Federal Labor Relations Authority*, 930 F.2d 1315 (8th Cir. 1991) 20
Associated General Contractors v. *California State Council of Carpenters*, 459 U.S. 519 (1983) 19
Association of American Physicians & Surgeons v. *Clinton*, 997 F.2d 898 (D.C. Cir. 1993) 20
Bayside Enterprises, Inc. v. *National Labor Relations Board*, 429 U.S. 298 (1977) ..... *passim*
Board of Governors of the Federal Reserve System v. *Dimension Financial Corp.*, 474 U.S. 361 (1986) 19
California National Guard v. *Federal Labor Relations Authority*, 697 F.2d 874 (9th Cir. 1983) 20
Chevron U.S.A. Inc. v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) 19, 20, 22
Coleman v. *Sanderson Farms, Inc.*, 629 F.2d 1077 (5th Cir. Unit A 1980) 3, 19
Department of the Navy v. *Federal Labor Relations Authority*, 836 F.2d 1409 (3d Cir. 1988) 20
Division of Military and Naval Affairs v. *Federal Labor Relations Authority*, 683 F.2d 45 (2d Cir. 1982), *cert. denied*, 464 U.S. 1007 (1983) 20
Farmers Reservoir & Irrigation Co. v. *McComb*, 337 U.S. 755 (1949) ..... *passim*
Imco Poultry, 202 N.L.R.B. 259 (1973) 10
Johnston v. *Cotton Producers Association*, 244 F.2d 553 (5th Cir. 1957) 21
K Mart Corp. v. *Cartier, Inc.*, 486 U.S. 281 (1988) 19
Kirschbaum Co. v. *Walling*, 316 U.S. 517 (1942) 13
Maneja v. *Waialua Agricultural Co.*, 349 U.S. 254 (1955) 12, 14, 18
Martin v. *Occupational Safety and Health Review Commission*, 499 U.S. 144 (1991) 20
McCarthy v. *Bronson*, 500 U.S. 136 (1991) 19
McLeod v. *Threlkeld*, 319 U.S. 491 (1943) 13
Mitchell v. *Budd*, 350 U.S. 473 (1956) 12
National Broiler Marketing Association v. *United States*, 436 U.S. 816 (1978) 3

TABLE OF AUTHORITIES—Continued

Page

Negonsott v. *Samuels*, 113 S. Ct. 1119 (1993) 13
Public Employees Retirement System of Ohio v. *Betts*, 492 U.S. 158 (1989) 19
Tsosie v. *Califano*, 651 F.2d 719 (10th Cir. 1981) 20
United States v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989) 13
United States v. *Shimer*, 367 U.S. 374 (1961) 22

Statutory Provisions

29 U.S.C. § 152(3) 4, 7
29 U.S.C. § 203(f) ..... *passim*
Departments of Labor, Health and Human Services and Education and Related Agencies Appropriations Act, 1995, Pub. L. No. 103-333, 108 Stat. 2539 8

Regulatory Provisions

29 C.F.R. § 780.126 21
29 C.F.R. § 780.136 21
29 C.F.R. § 780.137 21
29 C.F.R. § 780.151(k) 21
29 C.F.R. § 780.158(b) 21

Legislative Materials

81 Cong. Rec. 7653 (1937) 15
81 Cong. Rec. 7888 (1937) 14, 15, 16, 17
81 Cong. Rec. 7927-28 (1937) 16, 17
H.R. Rep. No. 2182, 75th Cong., 3rd Sess. (1938) 14
S. 2475, 75th Cong., 1st Sess. (1937) 14

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BRIEF OF AMICUS CURIAE THE NATIONAL BROILER COUNCIL IN SUPPORT OF PETITIONERS

STATEMENT OF INTEREST OF AMICUS CURIAE

Organized in 1954, the National Broiler Council ("NBC") is a national trade association representing the producers and processors of more than 95 percent of the broiler/fryer chickens consumed in the United States.[1]

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[1] This brief is filed with the consent of the parties. Copies of the consent letters have been filed with the Clerk.

NBC and its 225 member companies have a vital interest in the question presented in this case: whether employees of vertically integrated poultry producers who perform the tasks on a farm of catching, caging, loading, and transporting live chickens are properly classified as agricultural laborers exempt from certain requirements of the National Labor Relations Act ("NLRA") or instead as employees fully subject to the NLRA.

The operations of vertically integrated poultry producers embrace most aspects of poultry production, from hatching to processing to marketing. The court below accepted the position of the respondent, the National Labor Relations Board (the "NLRB" or "Board"), that the chicken catchers, forklift operators, and live-haul drivers employed by petitioners to perform agricultural activities on a farm are nevertheless not "agricultural laborers" under the NLRA, because they work for vertically integrated producers whose operations also include some non-agricultural activities. Pet. App. at A-48. This decision is contrary to the plain language of the relevant statute and, if upheld, would cause employees of integrated producers who perform agricultural activities on farms to be treated differently from employees of other producers who perform the identical activities. The NBC and its members have a strong interest in ensuring that federal labor laws apply uniformly to all agricultural producers throughout the Nation, and the NBC therefore urges the Court to reverse the judgment of the Court of Appeals.

STATEMENT OF THE CASE

As is typical of the operations of integrated poultry producers throughout the Nation, petitioners' chicks are entrusted to the care of independent contract farmers to be raised in conjunction with the activities of petitioners' employees. *See* NLRB Opp. App. at 3a; Pet. App. at A-787 to A-788 n.268. Some of these chicks—called broilers—are destined for retail stores, while others—called pullets or breeder chickens—are used for breeding

purposes. NLRB Opp. App. at 3a. Petitioners retain ownership of the chickens at all times and provide the feed and medicine necessary for their growth.

The contract farmers, however, do not perform all of the agricultural activities necessary to raise petitioners' chickens. For example, with respect to the broiler chickens, petitioners' employees perform the final "harvesting" of those chickens on the farms where they have been raised. This harvesting is done by petitioners' "live-haul" employees, who work in teams on the farms where the chickens are being raised.[2] The teams go to the farms at night, transported on flat bed trucks driven by the live-haul drivers. Once at the farm, the chicken catchers catch and cage the chickens. The forklift operator then places the cages on the flat bed truck, which is driven by the live-haul driver to a storage area near petitioners' processing plant. Pet. App. at A-58. *See also National Broiler Marketing Ass'n* v. *United States*, 436 U.S. 816, 820-822 (1978) (describing typical operations of vertically integrated poultry producers); *Coleman* v. *Sanderson Farms, Inc.*, 629 F.2d 1077, 1078 (5th Cir. Unit A 1980) (such "operations are apparently typical of those prevailing in the poultry industry"). Although the activities at issue in this case are performed by petitioners' employees, NBC's member companies often engage independent contractors organized specifically to provide such live-haul services. *See infra* at 17-18 & n.8.

Petitioners also employ similar workers in their hatchery operations. Some of these workers, variously referred to in the record as "pullet catchers," "pullet movers," or

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[2] In this brief, the term "live-haul employees" refers to persons employed by integrated poultry producers as chicken catchers, forklift operators, and live-haul drivers. A live-haul team consists of one live-haul driver, one forklift operator, and about nine chicken catchers. Pet. App. at A-40 to A-41.

"pullet haulers," catch pullets on contract farms, vaccinate them, cage them and then transport them to "laying houses" on those farms, where they lay eggs. Other of petitioners' employees, referred to as "egg haulers," transport the eggs to a hatchery where the process begins anew. NLRB Opp. App. at 3a. The main distinction between the pullet catching crews and the broiler catching crews is that the broiler crews work out of the processing operations while the pullet crews work out of the hatchery operations. *Id.* Their tasks, however, are essentially the same.

The NLRA excludes from its definition of an "employee" subject to the jurisdiction of the Board any individual employed as an "agricultural laborer." 29 U.S.C. § 152(3). "Agricultural laborer" is defined by reference to Section 3(f) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 203(f), which defines "agriculture" to include "farming in all its branches," including "the raising of * * * poultry, and any practices * * * performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."

In a representation proceeding brought to determine the appropriate bargaining unit for various of petitioners' employees, including both the pullet and the broiler crews, the Board—acting through the Regional Director—held that the pullet handlers and egg haulers were agricultural laborers exempt from coverage under the NLRA. NLRB Opp. App. at 4a. The Board reasoned that because petitioners' hatchery operations are agricultural activities within the ambit of the exemption, the pullet handlers and egg haulers, who perform work in conjunction with those hatchery operations, are "similarly engaged in the exempt activity of raising poultry." *Id.*

The Board, however, reached the opposite conclusion with respect to the broiler live-haul crews, reasoning that

"when an employer contracts with farmers for the care and feeding of the employer's chicks, the employer's status as a farmer engaged in the raising of poultry ends with respect to those chicks." *Id.* at 4a-5a. This holding was reaffirmed by an Administrative Law Judge in a subsequent proceeding by the union alleging unfair labor practices. *See* Pet. App. at A-786 to A-788. The Administrative Law Judge's ruling was then affirmed by a majority of the full Board. *See id.* at A-83 n.8, A-167 to A-168. Board Member Oviatt dissented because he found that petitioners' live-haul employees are agricultural laborers and therefore not covered by the NLRA. *Id.* at A-187 to A-188.

The Court of Appeals for the Fourth Circuit enforced the NLRB's order, over the partial dissent of Judge Niemeyer. The majority accepted the Board's position that the live-haul employees, even though most of them concededly perform agricultural activities on a farm, are nevertheless not agricultural laborers under the NLRA because "by the time they perform their work on the broiler chickens, their employer * * * is no longer engaged in primary agriculture with respect to those chickens." *Id.* at A-48. The Court thus ignored the plainly agricultural nature of the employees' work, as well as the conceded fact that the work was performed on farms, and instead relied solely on the fact that the chickens being caught on those farms had previously been entrusted to independent contractors to be raised. *Id.*

Like Board Member Oviatt, Judge Niemeyer concluded that petitioners' live-haul employees were not properly included in the bargaining unit because they are agricultural laborers excluded from the NLRA's coverage. *Id.* at A-60. Relying on the plain language of the governing statute, he concluded that

> the work of chicken catchers and fork lift operators was performed "on a farm as incident to or in conjunction with such farming operations" and therefore clearly qualifies these individuals as "agricultural la-

> borers." Moreover, all these chicken catchers, fork lift operators, and live-haul drivers were involved in "preparation for market" and "delivery to storage or to market." [*Id.*]

As explained below, there is no other reasonable interpretation of the plain language of the statute, and the Court should therefore reverse the judgment of the Court of Appeals.

SUMMARY OF ARGUMENT

The plain language of the governing statute is unambiguous. The term "employee" under the NLRA (incorporating the relevant definition under the FLSA) does not include any individual engaged in "the raising of * * * poultry, and any practices * * * performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market." 29 U.S.C. § 203(f). Under that definition, petitioners' employees are plainly agricultural laborers for two independent reasons: (1) because they perform activities "on a farm" that are incidental to the raising of poultry, including activities in "preparation for market, delivery to storage or to market or to carriers for transportation to market," and (2) because they perform such activities for a farmer. The Board's erroneous interpretation, embraced by the Court of Appeals, is contrary to Congress' intent as reflected in the plain language of the statute. Rather than examining the character of the employee's work as Congress intended, the Board's interpretation incorrectly focuses on petitioners' status as vertically integrated poultry producers.

Although the plain language of the statute is dispositive, the legislative history of the FLSA and the policy underlying the agricultural exemption likewise confirm that petitioners' employees are agricultural laborers. Before final passage of the statute, Congress amended the relevant language specifically to ensure that individuals

performing activities on a farm and incidental to farming, such as the employees of independent wheat harvesting companies, would be exempt regardless of whether they work for the owner of the particular farm or for someone else. Thus, Congress plainly intended to exempt all individuals who harvest agricultural commodities (including those who "harvest" chickens), even where the individual does not work for the particular farmer. The Board's contrary interpretation incorrectly accords a different status under federal law to the employees of vertically integrated producers than to other employees who perform precisely the same activities.

Finally, the Court of Appeals erred in deferring to the Board's interpretation of the FLSA, for two reasons. First, no deference is appropriate because Congress' intent, as expressed in the unambiguous language of the statute, is clear. Second, it is in any event improper to defer to the Board's interpretation of the FLSA, because administration of that statute has been entrusted not to the Board but to the Secretary of Labor. Contrary to the Board's position in this case, the Secretary of Labor has issued a definitive interpretation of the FLSA establishing that petitioners' employees are agricultural laborers under the relevant statutory language. Thus, if any deference is appropriate in this case, the Court should defer to the Secretary of Labor's contrary interpretation of the FLSA, not the Board's.

ARGUMENT

I. PETITIONERS' LIVE-HAUL EMPLOYEES ARE AGRICULTURAL LABORERS UNDER THE PLAIN LANGUAGE OF THE STATUTE.

The NLRA specifically excludes from its definition of an "employee" subject to the jurisdiction of the Board any individual employed as an "agricultural laborer." 29 U.S.C. § 152(3). As this Court has noted, since 1947 Congress has annually enacted a rider to the Board's ap-

propriations bill mandating that the definition of "agricultural laborer" under the NLRA shall be the definition provided by Section 3(f) of the FLSA. *See Bayside Enterprises, Inc.* v. *NLRB*, 429 U.S. 298, 300 n.6 (1977); Departments of Labor, Health and Human Services and Education and Related Agencies Appropriations Act, 1995, Pub. L. No. 103-333, Title IV, 108 Stat. 2539, 2570 (most recent appropriations act).

Under Section 3(f) of the FLSA, the term "agriculture" is defined to include:

> farming in all its branches and among other things includes * * * *the raising of* * * * *poultry*, and any practices * * * performed by a farmer *or* on a farm as an incident to or in conjunction with such farming operations, *including preparation for market, delivery to storage or to market or to carriers for transportation to market.* [29 U.S.C. § 203(f) (emphasis supplied).]

As the Court has explained, this definition comprises two "distinct branches." *Farmers Reservoir & Irrigation Co.* v. *McComb*, 337 U.S. 755, 762 (1949). The first (or primary) meaning includes farming in all its branches. *Id.* Vertically integrated poultry producers often perform farming in the primary sense (for example, as the Board has conceded in this case, when they operate hatcheries). But the definition of agriculture (and thus an agricultural laborer) is not limited to farming itself. The definition also encompasses the "broader" (or secondary) meaning of agriculture:

> Agriculture is defined to include things other than farming as so illustrated. It includes any practices, whether or not themselves farming practices, which are performed *either* by a farmer *or* on a farm, incidently to or in conjunction with "such" farming operations. [*Id.* at 763 (emphasis supplied).]

See also id. at 766 ("Such practices are exempt only if they are performed by a farmer *or* on a farm.") (emphasis supplied).

Under this statutory definition, it is clear that petitioners' live-haul employees are "agricultural laborers" within the plain meaning of the statute. The chicken catchers and forklift operators work "on a farm" (as even the Board has conceded), doing tasks in conjunction with farming operations. *See* Pet. App. at A-46. The live-haul drivers not only assist the chicken catchers in those tasks on the farms, but are also clearly included in the definition of Section 3(f) as persons performing the "delivery [of poultry] to storage or to market or to carriers for transportation to market." Thus, to the extent that the live-haul drivers do not work on farms, they are plainly performing activities incidental to petitioners' primary activity of "harvesting" poultry.[3] The Board therefore has no jurisdiction over these employees.

This holding is fully in accord with this Court's decision in *Bayside*. The employees at issue there merely transported feed from their employer's facilities to independent farms. There was no claim that they performed their work "on a farm," or that they performed the core agricultural activity of harvesting their employer's chickens. As the Court explained, "[s]ince there is no claim that these drivers work 'on a farm,' the question is whether their activity should be regarded as work performed 'by a farmer.'" 429 U.S. at 301. Because the employer in *Bayside* was not considered a "farmer" with respect to the specific activities at issue in that case, the Court held that the feed deliverers were not agricultural laborers.

This Court in *Bayside* looked to the character of the employer's operations only because it was considering whether the work in question was being performed "by a farmer." The statute, however, applies to practices per-

[3] NBC endorses petitioners' contention that all of the live-haul employees are exempt because petitioners have resumed their statutory status as "farmers" when their employees harvest the chickens. This brief, however, focuses on the separate contention that these employees are exempt because of the work they perform "on a farm," regardless of the status of their employer.

formed *either* "by a farmer" *or* "on a farm." Under this plain language, if the work is performed "on a farm" and otherwise meets the criteria set forth in the statute, it makes no difference whether the worker's employer is a farmer under the statute. The worker is still an agricultural laborer because of the nature of the work he performs "on a farm."

The same distinction was drawn in *Farmers Reservoir*, where the Court considered a contention that the employees of a cooperative association that maintained an irrigation system and delivered water to farmers were employed in agriculture within the meaning of the FLSA. The Court emphasized that the activities of the employees ceased at the point where the water was released from the headgates for delivery to farms, after which point the farmers themselves were responsible for the task of irrigating their own crops on their own farms. 337 U.S. at 763. Thus, the employees of the irrigation cooperative were held not to be exempt from the FLSA because "it is clear that the work of the company's employees is done *neither on a farm or by farmers*." *Id.* at 767 (emphasis supplied). If, by contrast, the employees had been responsible for irrigating the farmers' crops on the farms, they would plainly have been agricultural laborers.

As characterized by the Court of Appeals, the Board contends that petitioners' employees are not agricultural laborers because "by the time they perform their work on the broiler chickens, their employer—Holly Farms—is no longer engaged in primary agriculture with respect to those chickens." Pet. App. at A-48 (citing *Bayside*, 429 U.S. at 302 n.9 and *Imco Poultry*, 202 N.L.R.B. 259, 260 (1973)). "Thus, the Board has reasoned, the employees' activities are neither incidental to nor in conjunction with *Holly Farms'* primary agricultural practices and, therefore, the employees' work cannot amount to secondary agriculture." *Id.* at A-48 to A-49 (emphasis in original). The Board has elaborated on that position before this Court, contending that although the work of the live-

haul employees (at least the chicken catchers and fork-lift operators) concededly takes place "on a farm," the work is not "incident to or in conjunction with" the farming operations of the independent growers (which, according to the Board, consist only of raising chicks), but instead is incidental only to petitioners' "poultry slaughtering operation," which is not itself a "primary" farming operation. NLRB Opp. at 23.

This analysis—which was adopted by the Court of Appeals—is contrary to the plain language of the statute, in that it focuses only on whether the employer is a "farmer" and ignores that the agricultural exemption may also be triggered by the nature of the work performed by employees "on a farm," *regardless* of the status of their employer. To the Board, the character of the work performed by the employees makes no difference, nor does the fact that they perform that work on a farm, because petitioners are integrated poultry producers. The statute, however, specifically includes "the raising of poultry" as a farming operation and exempts *any* employee who performs activities on a farm "incident to or in conjunction with" that farming operation, regardless of who employs that individual. Indeed, as explained below, Congress added the words "or on a farm" to the statute specifically to exempt individuals who perform agricultural activities on a farm but who are not themselves employed by the particular farmer. *See infra* at 14-18.

Likewise, the plain language of the statute disposes of the Board's strained position that catching chickens on a farm, preparing them for delivery to a processing plant, and delivering them to that plant are not activities "incident to or in conjunction with" the primary agricultural activity of raising poultry, but rather are incidental only to subsequent slaughtering activities. The Court need not engage in the Board's fruitless invitation to decide whether the chicken comes before the egg, for Congress has already addressed the precise question in the statute itself. As Congress provided, activities "incident to or in con-

junction with" primary farming specifically "includ[e] preparation for market, delivery to storage or to market or to carriers for transportation to market." 29 U.S.C. § 203(f). There can be no question that the activities of petitioners' live-haul employees fall into one or all of these specifically enumerated categories. For example, in *Mitchell* v. *Budd*, 350 U.S. 473 (1956), in the course of holding that a mechanized tobacco "bulking" operation was not an activity in "preparation for market," the Court concluded that "the agricultural operation" extended up to "the delivery of the tobacco at the receiving platform of the bulking plant." *Id.* at 481. So too here the agricultural activity plainly continues at least until the broilers reach the processing plant.[4]

And even if Congress had not spoken to the issue, the activity of catching chickens on a farm and delivering them for processing is unquestionably "incident to or in conjunction with" the raising of poultry, just as harvesting wheat (an activity specifically mentioned in the legislative history, *see infra* at 14-16) is incidental to the raising of that commodity. In the Board's view, harvesting wheat is incidental only to the subsequent processing of the wheat, an interpretation that cannot be reconciled either with the plain language of the statute or its legislative history. Thus, contrary to the Board's position, the live-haul activities at issue here are plainly "incident to or in con-

[4] In *Mitchell*, the Court also noted that the "bulking" plant was not an agricultural activity under Section 3(f) because "tobacco farmers do not ordinarily perform the bulking operation" and because that operation changes the "natural state" of the tobacco and "turns it into an industrial product" through a process " 'more akin to manufacturing than to agriculture.' " *Id.* at 481-482 (quoting *Maneja* v. *Waialua Agricultural Co.*, 349 U.S. 254, 265 (1955)). Neither of these factors is even remotely present in this case. There is no evidence here that chicken catching is not an activity ordinarily undertaken by farmers; indeed, there is no other way to physically cull the chickens for slaughter. And of course the manual labor performed by the live-haul employees is in no way an "industrial" process that alters the "natural state" of the chickens.

junction with" the raising of poultry whether the activities are performed by a farmer or by someone else. Under the statute, the question whether a particular activity is incident to a "primary" farming activity must depend on the nature of the activity itself, rather than the nature of the employer.

In *Bayside*, the Court confirmed that the status of particular employees as agricultural laborers "is determined by *the character of the work which they perform* for their own employer." 429 U.S. at 303 (emphasis supplied). *See also McLeod* v. *Threlkeld*, 319 U.S. 491, 494 (1943) (when construing jurisdiction of the FLSA, "it is the activities of the employee and not of the employer which are decisive"); *Kirschbaum Co.* v. *Walling*, 316 U.S. 517, 524 (1942) ("the provisions of the [FLSA] expressly make its application dependent upon the character of the employees' activities"). Thus, it is the character of the work performed by petitioners' employees—agricultural activities that are undertaken "on a farm" and that involve the preparation and delivery of agricultural commodities for market—that render those employees agricultural laborers under the statute, regardless of whether their employer is considered to be engaged in farming under the statute.[5]

II. THE LEGISLATIVE HISTORY AND POLICY OF THE STATUTE CONFIRM THAT PETITIONERS' EMPLOYEES ARE AGRICULTURAL LABORERS.

Because the plain language of the statute is conclusive, there is no need to look any further. *See, e.g., Negonsott* v. *Samuels*, 113 S. Ct. 1119, 1122-23 (1993); *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). But, as explained below, both the legislative

[5] The irrationality of the Board's position is underscored by its holding that the agricultural exemption applies to petitioners' employees who catch broiler chickens, but not to those who catch pullets, notwithstanding that these employees perform the same activities. *See supra* at 3-5.

history of the FLSA, as well as the policies underlying the agricultural exemption, confirm that petitioners' employees are agricultural laborers. Indeed, the legislative history demonstrates that the relevant language of the FLSA was enacted *specifically* to ensure that an individual who performs agricultural activities on a farm is considered an agricultural employee regardless of whether he may work for the owner of the particular farm.

The agricultural exemption to the FLSA was one of the most carefully considered aspects of the entire Act. As this Court has noted, "[f]rom the very beginning of the legislative consideration of the Act, a comprehensive exemption of agricultural labor was a primary consideration of the Congress. Nevertheless, before its final language developed, the agriculture exemption ran the gamut of extensive debates and amendments, each of the latter invariably broadening its scope." *Maneja* v. *Waialua Agricultural Co.*, 349 U.S. 254, 260 (1955).

As reported out of Senate committee, the bill that was to become the FLSA originally had exempted farming operations and " 'any practices ordinarily performed by a farmer as an incident to such farming operations.' " *Id.* (quoting S. 2475, 75th Cong., 1st Sess. 51) (emphasis removed). On the Senate floor, however, an amendment was added that specifically inserted the words "or on a farm" into the text of Section 3(f). *See* 81 Cong. Rec. 7888. In the same amendment, the words "including delivery to market" were inserted after the words "farming operations." *Id.*[6] As the Court explained in *Farmers Reservoir*:

[6] Prior to passage by both houses of Congress, the words "delivery to market" were expanded to include "preparation for market, delivery to storage or to market or to carriers for transportation to market." This change was apparently made by a committee of the House following passage by the Senate. *See* H.R. Rep. No. 2182, 75th Cong., 3rd Sess. 2 (1938); *Farmers Reservoir*, 337 U.S. at 765-766 n.14.

> This language was carefully considered by Congress. As originally introduced, the exemption covered such practices only if performed by a farmer. On the floor of the Senate it was objected that this would exclude the threshing of wheat or other functions *necessary to the farmer* if those functions were not performed by the farmer and his hands, but by separate companies organized for and devoted solely to that particular job. To take care of that situation the words "or on a farm" were added to the definition. Thus, the wheat threshing companies, even though they were separate enterprises, were included in the exemption because their work was incidental to farming and was done on the farm. [337 U.S. at 767 (footnotes omitted; emphasis supplied).]

The catching, cooping and delivery of chickens is "necessary to the farmer." Unless someone catches the chickens, the farmer is running a zoo, not a farm.

As the sponsor of this amendment, Senator McGill, made clear:

> [T]he purpose of the amendment is to broaden the definition of "employee" as applied to agriculture. I can readily see how some have construed the language of the bill to mean that one who operates a thrashing machine outfit and employs a crew and is employed by a farmer to thrash his wheat might be included under the provisions of the bill. Likewise, those who engage in harvesting and delivering to market might be included. [81 Cong. Rec. 7888 (statement of Sen. McGill).]

See also Farmers Reservoir, 337 U.S. at 767 n.16 (quoting colloquy at 81 Cong. Rec. 7653 regarding example of wheat threshers).

The amendment, however, was intended to apply broadly to all such situations, not just the employees of independent wheat threshing companies. When a Senator noted that the picking and harvesting of many other commodities (such as peanuts) is "done purely by contract

with outsiders, who in a great many cases have no farm interest," Senator McGill confirmed that the amendment was intended to apply to "any commodity produced on a farm" and that the intent was "to make the language of the amendment broad enough to include all work done on a farm, so long as it is incidental to agricultural purposes," including "all labor performed in making the delivery to market." 81 Cong. Rec. 7888 (statements of Sens. George and McGill).[7] The next day, he reiterated that "the purpose of those amendments [was] to exclude from the bill all labor performed on a farm, *whether by contract with the farmer or otherwise*, and to exclude all labor connected with the delivery to market of commodities produced on a farm." 81 Cong. Rec. 7927-28 (statement of Sen. McGill) (emphasis supplied).

Senator McGill's amendment was thus intended to address precisely the facts presented in this case. The words

[7] MR. GEORGE. Would the amendment also apply to the harvesting of any other crop [in addition to wheat]?

MR. McGILL. It would apply to any commodity produced on a farm.

MR. GEORGE. Would it apply to peanut pickers who pick in the fields?

MR. McGILL. Yes.

MR. GEORGE. And who move the peanuts to market?

MR. McGILL. Yes; that is my understanding.

* * *

MR. McGILL. I may say to the Senator from Georgia and other Senators that it is my object to make the language of the amendment broad enough to include all work done on a farm, so long as it is incidental to agricultural purposes.

MR. GEORGE. And so long as it is merely preparatory and necessarily preparatory to the marketing of the field crop. Is that true?

MR. McGILL. That is true and the language would also include all labor performed in making the delivery to market.

Id. Senator Black, the sponsor of the bill (and a future member of the Court), also confirmed this interpretation of the amendment. *Id.*

"or on a farm" were specifically intended to confirm that all individuals who perform agricultural activities on a farm but who are not employed by that farmer are nonetheless exempt agricultural workers. Here, petitioners' employees are engaged in "harvesting" an agricultural commodity (poultry) on a farm, and in preparing and delivering that commodity to storage or market. Even though they are not employed by the farmer who owns the particular farm, they are exempt under Section 3(f).

The Board has attempted to sweep away this legislative history by contending that Senator McGill's amendment was intended to cover only the narrow situation of "employees of specialized independent contractors, such as an employee who hauls his threshing machine 'from farm to farm' and who 'makes a business of doing nothing but threshing.'" NLRB Opp. at 24 (quoting *Farmers Reservoir*, 337 U.S. at 766-767 & n.16). That crabbed reading is directly contrary to the statutory language and the expressed intent of Congress. As noted, although specific examples were used during the debate, the amendment was intended to apply broadly to "*any* commodity produced on a farm," to "*all* work done on a farm," and to "*all* labor performed in making the delivery to market." 81 Cong. Rec. 7888 (emphases supplied); *see also* 81 Cong. Rec. 7927-28. There is no indication that Congress intended to limit its amendment only to "specialized independent contractors," and, of course, no such limitation appears in the statute.

Nor would such a limitation make any sense. Under the Board's fanciful interpretation, petitioners' employees would be considered agricultural laborers if petitioners organized a separate company devoted to live-haul activities. It is precisely to avoid such arbitrariness that Congress properly focused the inquiry on the nature of the

particular employee's work rather than the nature of the employer. *See supra* at 13.[8]

Holding that petitioners' employees are agricultural laborers also comports with the policy of uniformity that underlies the agricultural exemption. This Court long ago rejected the notion that the exemption was intended only to benefit "traditional" farming enterprises, holding that the fact that a company's "size has permitted it to achieve an extraordinary degree of specialization should not deprive it of this exemption." *Maneja*, 349 U.S. at 263. *See also id.* at 261 ("We do not believe the Congress intended to deprive farmers having their own mills of the exemption it afforded farmers who do not."). Thus, in that case, the Court held that the exemption applied to the workers on a large corporate plantation who perform agricultural activities (including, for example, workers on a company railroad used to transport crops from the fields), regardless of the company's size and degree of specialization. The decision below, by contrast, holds that application of the agricultural exemption turns not on the activities performed by the employees in question, but rather on petitioners' status as vertically integrated poultry producers. The term agricultural laborer, however, cannot mean one thing when applied to an employee of a vertically integrated producer and another thing when applied to an employee of a different producer performing the identical activities. Rather, the Court should reaffirm the longstanding principle that the agricultural exemption applies uniformly to *all* employees performing similar

[8] In fact, the live-haul activities undertaken for NBC's members are often performed by independent contractors organized specifically to provide such services. Under the Board's reading of the statute and its legislative history, the employees of these companies would be exempt from the NLRA but petitioners' employees who perform the same activities would not. Such a distinction is completely irrational and is contrary to Congress' intent that all employees performing the same activities be treated alike, regardless of who employs them.

tasks, regardless of what other operations their employer may perform in other aspects of its business.

III. NO DEFERENCE IS OWED TO THE BOARD'S ERRONEOUS INTERPRETATION OF THE FLSA.

The majority of the Court of Appeals felt constrained to uphold the decision of the Board because it believed it was required to defer to the Board's construction of the FLSA. *See* Pet. App. at A-52. That ruling was incorrect. As explained below, no deference is owed to the Board's erroneous interpretation of Section 3(f) for two different reasons.

First, as explained above, the Board's interpretation conflicts with the unambiguous language of the statute, as well as with the clear intent of Congress. *See also Coleman*, 629 F.2d at 1079 (conclusion that live-haul employees are agricultural laborers is dictated by "the plain language of the statute"). It is well-settled that "[i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984). Thus, no amount of agency deference can lead to a reading contrary to a statute's plain language. *See, e.g., Public Employees Retirement System of Ohio* v. *Betts*, 492 U.S. 158, 171 (1989); *Board of Governors of the Federal Reserve System* v. *Dimension Financial Corp.*, 474 U.S. 361, 368 (1986). Moreover, in determining whether Congress' intent is clear, the Court looks to the language and design of the statute as a whole, including legislative history where appropriate. *McCarthy* v. *Bronson*, 500 U.S. 136, 139 (1991); *K Mart Corp.* v. *Cartier, Inc.*, 486 U.S. 281, 291 (1990); *Associated General Contractors* v. *California State Council of Carpenters*, 459 U.S. 519, 529-531 (1983).

Here, as explained above, Congress' intent is absolutely clear. The plain language of the statute is unambiguous

and leaves no doubt that petitioners' live-haul employees are agricultural laborers. Moreover, the legislative history demonstrates that the relevant language of Section 3(f) was enacted to address the precise situation presented in this case. Accordingly, the Board exceeded its lawful authority in adopting a statutory construction at odds with Congress' clearly expressed intent, and that erroneous interpretation is entitled to no degree of deference.

Second, deference is in any event appropriate only for "an executive department's construction of a statutory scheme *it is entrusted to administer.*" *Chevron*, 467 U.S. at 844 (emphasis supplied). Thus, it is well-settled that no degree of deference is warranted where, as here, an agency has interpreted a statute entrusted to the administration of a different agency. *See Martin* v. *Occupational Safety and Health Review Comm'n*, 499 U.S. 144 (1991) (deferring to Secretary of Labor's statutory interpretation over contrary interpretation of different agency, where Congress entrusted primary administration of statute to the Secretary).[9]

This case turns not on the interpretation of any specific language in the NLRA itself, but rather on an interpretation of another statutory provision, Section 3(f) of the FLSA, which is administered by the Department of Labor. Thus, the specific statutory provision at issue in this case has not been entrusted to the Board to administer, but rather falls within the purview of the Secretary of Labor.

In *Bayside*, the Court did not need to address the question of whether the Board's or the Secretary of Labor's

[9] *See also Association of Amer. Physicians & Surgeons* v. *Clinton*, 997 F.2d 898, 913 (D.C. Cir. 1993); *American Fed. of Government Employees, AFL-CIO, Local 3854* v. *FLRA*, 930 F.2d 1315, 1324 n.12 (8th Cir. 1991); *Department of the Navy* v. *FLRA*, 836 F.2d 1409, 1410 (3d Cir. 1988); *California Nat'l Guard* v. *FLRA*, 697 F.2d 874, 879 (9th Cir. 1983); *Division of Military and Naval Affairs* v. *FLRA*, 683 F.2d 45, 48 (2d Cir. 1982), *cert. denied*, 464 U.S. 1007 (1983); *Tsosie* v. *Califano*, 651 F.2d 719, 722 (10th Cir. 1981).

interpretation of Section 3(f) was entitled to deference, because the Court found that the Board's reasoning was fully consistent with the Secretary of Labor's construction of the statute. *See Bayside*, 429 U.S. at 303 & n.13. Here, however, the Secretary of Labor has taken the *opposite* view from the Board. The Secretary of Labor has issued a definitive interpretation of Section 3(f) as it applies to contractual arrangements between poultry feed dealers or processors and the independent farmers who raise their chickens. Under that longstanding interpretation:

> Employees of the feed dealer or processor who perform work on a farm as an incident to or in conjunction with the raising of poultry on the farm are employed in "secondary" agriculture. [29 C.F.R. § 780.126 (citing 29 C.F.R. § 780.137 *et seq.* and *Johnston* v. *Cotton Producers Ass'n*, 244 F.2d 553 (5th Cir. 1957)).[10]]

The Secretary has also stated that "employees engaged in inspecting and culling flocks of poultry" are exempt under Section 3(f) because their activities are performed "on a farm," regardless of whether they are employed by the farmer, and that the statutory term "preparation for market" specifically includes such activities as the "[c]ulling, grading, cooping and loading" of poultry. *See* 29 C.F.R. §§ 780.136, 780.151(k), 780.158(b).

These regulations make clear that, according to the Secretary of Labor, an employee who engages in the culling, cooping and loading of chickens on a farm is an agricultural employee regardless of whether the employee

[10] *Johnston* involved an employee of a feed dealer that, like petitioners in this case, contracted with independent farmers to raise chickens for the dealer. The court held that the employee, who engaged in the activities of "catching, cooping and loading of chickens on the growers' farms" was an agricultural employee under Section 3(f). 244 F.2d at 554-555. The holding in *Johnston*, embraced by the Secretary of Labor, is precisely the holding advocated by petitioners here.

works for the owner of the farm or for someone else. Thus, although no deference is warranted to any agency interpretation given the clarity of the statute, if the Court nevertheless concludes that some deference is appropriate it should defer to the interpretation of the Department of Labor—the agency entrusted to administer the particular provision at issue here—rather than to the contrary interpretation of the Board.[11]

CONCLUSION

For the foregoing reasons, and those set forth in petitioners' brief, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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[11] Even if the Court determines that some amount of deference is owed to the Board's interpretation of Section 3(f) of the FLSA, the Court should nevertheless reject that interpretation, because (for the reasons set forth above) it does not represent a "'*reasonable* accommodation of conflicting policies that were committed to the agency's care by the statute * * *.'" *Chevron*, 467 U.S. at 845 (quoting *United States* v. *Shimer*, 367 U.S. 374, 383 (1961)) (emphasis supplied).